

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANIEL SIEGFRIED,

Plaintiff,

v.

McNEIL CONSUMER & SPECIALTY
PHARMACEUTICALS, A DIVISION OF
McNEIL-PPC, INC., a foreign corporation,
JOHNSON & JOHNSON-MERCK
CONSUMER PHARMACEUTICALS CO.,
a foreign corporation, and JOHNSON &
JOHNSON, a foreign corporation,

Defendants.

C.A. No.:

JURY OF SIX DEMANDED

COMPLAINT

PARTIES

1. Plaintiff, Daniel Siegfried, is an individual who resides at P.O. Box 382, Analomink, Pennsylvania 18320.
2. Defendant, McNeil Consumer & Specialty Pharmaceuticals, a division of McNeil-PPC, Inc. (hereinafter referred to as "McNeil"), is a foreign corporation whose principal place of business is located at 7050 Camp Hill Road, Fort Washington, Pennsylvania 19034. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].
3. Defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., is a foreign corporation whose principal place of business is located at 7050 Camp Hill Road, Fort Washington, Pennsylvania 19034. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].
4. Defendant, Johnson & Johnson, is a foreign corporation whose principal place of business is located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

[DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT PURSUANT TO 10 Del. C. § 3915].

JURISDICTION

5. Paragraphs 1 through 4 are incorporated herein by reference.

6. Jurisdiction is conferred pursuant to 28 U.S.C. §1332(a)(1) and § 1332(c)(1) as the amount in controversy exceeds \$75,000.00 and the action is between citizens of different states. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a), as this is the judicial district in which some of the defendants reside and the judicial district in which a substantial part of the events or omissions giving rise to this claim occurred.

FACTUAL ALLEGATIONS

7. On or about June 5, 2005, at approximately 11:00 a.m., the plaintiff, Daniel Siegfried, was a passenger on the back of a "Team Tylenol" promotional golf cart, at the Dover International Speedway in Dover, Delaware.

8. At the aforementioned time and place, the golf cart, recklessly operated by an unidentified employee, made a sharp turn on the racetrack, throwing the plaintiff off the back of the cart onto the blacktop track, resulting in severe personal injuries to the plaintiff, Daniel Siegfried.

9. On the above-mentioned date, the unidentified operator of the golf cart was an employee of McNeil and/or Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and/or Johnson & Johnson, and was acting within the scope of his employment.

10. At all times relevant, the defendant, McNeil, owned, maintained, managed, and/or controlled the golf cart and was responsible for the promotional campaign at the Dover Motor Speedway.

11. At all times relevant, the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., owned, maintained, managed, and/or controlled the golf cart and was responsible for the promotional campaign at the Dover Motor Speedway.

12. At all times relevant, the defendant, Johnson & Johnson owned, maintained, managed, and/or controlled the golf cart and was responsible for the promotional campaign at the Dover Motor Speedway.

COUNT I
CLAIM AGAINST McNEIL

13. Paragraphs 1 through 12 are incorporated by reference.

14. The direct and proximate cause of the plaintiff's injuries was the negligence of the defendant, McNeil, its agents, servants and/or employees while acting in the course and scope of their employment.

15. The negligence of McNeil, agents, servants, and/or employees is imputed onto the defendant, McNeil.

16. The unknown employee, who operated the golf cart, was an employee of the defendant, McNeil, acting within the scope of his employment at all times relevant.

17. A proximate cause of the aforesaid collision was the negligence of the defendant, McNeil, by negligently hiring the unidentified employee, whom they knew or should have known would act in a manner likely to cause injury to third persons.

18. Defendant, McNeil, did not use reasonable care in selecting an employee, specifically the operator of the golf cart, competent for the work intended.

19. The defendant, McNeil, by negligently hiring a person whom they knew or should have known would act in a manner likely to cause injuries to third parties, acted in a manner which constituted willful and wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.

20. The direct and proximate result of the accident was the negligence of the defendant, McNeil, as follows:

- (a) It knew or should have known of the existence of an unsafe condition on its property, namely the slippery substance on the seats of the golf cart;
- (b) It failed to provide a seat restraining device;
- (c) It failed to take adequate steps to prevent the dangerous conditions then existing;
- (d) It failed to remedy the dangerous conditions within a reasonable period of time after it became aware or should have become aware of the dangerous condition;
- (e) It failed to take reasonable precautions to prevent this accident from happening;
- (f) It failed to maintain its property in a safe condition;
- (g) It failed to adequately remove dangerous conditions from its property so it would be safe for individuals to sit on said property;
- (h) It failed to provide an alternate location for the plaintiff to sit to prevent individuals from encountering the dangerous condition;
- (i) It acted with willful or wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.
- (j) It failed to fulfill its duty to protect individuals riding on the vehicle, including the plaintiff, Daniel Siegfried, from dangerous conditions.
- (k) It failed to adequately supervise and/or train its employees including the employee that operated the vehicle;
- (l) It was otherwise negligent.

COUNT II
CLAIM AGAINST JOHNSON & JOHNSON- MERCK CONSUMER
PHARMACUETICALS CO.

21. Paragraphs 1 through 20 are incorporated by reference.

22. The direct and proximate cause of the plaintiff's injuries was the negligence of the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., its agents, servants and/or employees while acting in the course and scope of their employment.

23. The negligence of Johnson & Johnson- Merck Consumer Pharmaceuticals Co.'s agents, servants, and/or employees is imputed onto the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co..

24. The unknown employee, who operated the golf cart, was an employee of the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., acting within the scope of his employment at all times relevant.

25. A proximate cause of the aforesaid collision was the negligence of the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., by negligently hiring the unidentified employee, whom they knew or should have known would act in a manner likely to cause injury to third persons.

26. Defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., did not use reasonable care in selecting an employee, specifically the operator of the golf cart, competent for the work intended.

27. The defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., by negligently hiring a person whom they knew or should have known would act in a manner likely to cause injuries to third parties, acted in a manner which constituted willful and wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.

28. The direct and proximate result of the accident was the negligence of the defendant, Johnson & Johnson- Merck Consumer Pharmaceuticals Co., as follows:

- (a) It knew or should have known of the existence of an unsafe condition on its property, namely the slippery substance on the seats of the golf cart;
- (b) It failed to provide a seat restraining device;
- (c) It failed to take adequate steps to prevent the dangerous conditions then existing;
- (d) It failed to remedy the dangerous conditions within a reasonable period of time after it became aware or should have become aware of the dangerous condition;
- (e) It failed to take reasonable precautions to prevent this accident from happening;
- (f) It failed to maintain its property in a safe condition;
- (g) It failed to adequately remove dangerous conditions from its property so it would be safe for individuals to sit on said property;
- (h) It failed to provide an alternate location for the plaintiff to sit to prevent individuals from encountering the dangerous condition;
- (i) It acted with willful or wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.
- (j) It failed to fulfill its duty to protect individuals riding on the vehicle, including the plaintiff, Daniel Siegfried, from dangerous conditions.
- (k) It failed to adequately supervise and/or train its employees including the employee that operated the vehicle;
- (l) It was otherwise negligent.

COUNT III
CLAIM AGAINST JOHNSON & JOHNSON

29. Paragraphs 1 through 28 are incorporated by reference.

30. The direct and proximate cause of the plaintiff's injuries was the negligence of the defendant, Johnson & Johnson, its agents, servants and/or employees while acting in the course and scope of their employment.

31. The negligence of Johnson & Johnson's agents, servants, and/or employees is imputed onto the defendant, Johnson & Johnson.

32. The unknown employee, who operated the golf cart, was an employee of the defendant, Johnson & Johnson, acting within the scope of his employment at all times relevant.

33. A proximate cause of the aforesaid collision was the negligence of the defendant, Johnson & Johnson, by negligently hiring the unidentified employee, whom they knew or should have known would act in a manner likely to cause injury to third persons.

34. Defendant, Johnson & Johnson, did not use reasonable care in selecting an employee, specifically the operator of the golf cart, competent for the work intended.

35. The defendant, Johnson & Johnson, by negligently hiring a person whom they knew or should have known would act in a manner likely to cause injuries to third parties, acted in a manner which constituted willful and wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.

36. The direct and proximate result of the accident was the negligence of the defendant, Johnson & Johnson, as follows:

(a) It knew or should have known of the existence of an unsafe condition on its property, namely the slippery substance on the seats of the golf cart;

(b) It failed to provide a seat restraining device;

(c) It failed to take adequate steps to prevent the dangerous conditions then existing;

(d) It failed to remedy the dangerous conditions within a reasonable period of time after it became aware or should have become aware of the dangerous condition;

- (e) It failed to take reasonable precautions to prevent this accident from happening;
- (f) It failed to maintain its property in a safe condition;
- (g) It failed to adequately remove dangerous conditions from its property so it would be safe for individuals to sit on said property;
- (h) It failed to provide an alternate location for the plaintiff to sit to prevent individuals from encountering the dangerous condition;
- (i) It acted with willful or wanton disregard for the safety of others, including the plaintiff, Daniel Siegfried.
- (j) It failed to fulfill its duty to protect individuals riding on the vehicle, including the plaintiff, Daniel Siegfried, from dangerous conditions.
- (k) It failed to adequately supervise and/or train its employees including the employee that operated the vehicle;
- (l) It was otherwise negligent.

CLAIM IV
CLAIM OF DANIEL SIEGFRIED

37. Paragraphs 1 through 36 are incorporated by reference.

38. As a direct and proximate result of the defendants' negligence, the plaintiff, Daniel Siegfried, suffered personal injuries both of a temporary and permanent nature, including, but not limited to: injuries to the thoracic and lumbar spine.

39. As a consequence of his injuries, the plaintiff, Daniel Siegfried, has been required to undergo prolonged medical treatment, including but not limited to interventional procedures such as sacroiliac joint and selective nerve blocks and epidurals.

40. As a further consequence of his injuries, the plaintiff, Daniel Siegfried, has experienced, continues to experience and is likely to experience in the future, substantial physical pain and suffering, and discomfort.

41. As a further consequence of his injuries, the plaintiff, Daniel Siegfried, has experienced, continues to experience and is likely to experience in the future, emotional pain suffering, anxiety and nervousness.

42. As a further result of the defendants' negligence, the plaintiff, Daniel Siegfried, has incurred, and may in the future continue to incur, medical bills for the treatment of the injuries sustained in the accident.

WHEREFORE, the plaintiff prays that this Court enter judgment against the defendants, McNeil Consumer & Specialty Pharmaceuticals, a division of McNeil-PPC, Inc., Johnson & Johnson- Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, jointly and severally, for all compensatory and special damages and the cost of this action, along with any additional relief that the Court may deem proper

DOROSHOW, PASQUALE,
KRAWITZ & BHAYA

By:

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2-22-07

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

07-118

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DANIEL SIEGFRIED

(b) County of Residence of First Listed Plaintiff Anaomink, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Arthur M. Krawitz, Matthew R. Foggy
Doroshaw, Pasquale Krawitz & Bhagya
1202 Kirkwood Ave., Wilmington, DE 19805

DEFENDANTS

MCNEIL Consumer & Specialty Pharmaceuticals
a division of McNeil-PPC, Inc., Johnson &
Johnson-Merck Consumer Pharmaceuticals Co
and Johnson & Johnson
County of Residence of First Listed Defendant Fort Washington, PA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 |
| Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332(a)(1) and 1332(c)(1), 28 USC 1391(a)

Brief description of cause:

Plaintiff was thrown from golf cart while promoting Tuleenol.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/23/07

SIGNATURE OF ATTORNEY OF RECORD

M. Krawitz

FOR OFFICE USE ONLY

RECEIPT #

146566

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Mag Consent issued

SI-3

Doroshaw Pasquale

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07 - 118

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF _____ COPIES OF AO FORM 85.

2/26/07

(Date forms issued)



(Signature of Party or their Representative)

Chris Warnick

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action